



## **DEPARTMENT OF LABOR**

### **Mine Safety and Health Administration**

#### **Petitions for Modification of Application of Existing Mandatory Safety Standards**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

**DATES:** All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. Electronic Mail: [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include the docket number of the petition in the subject line of the message.

2. Facsimile: 202-693-9441.

3. Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 201 12<sup>th</sup> Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: S. Aromie Noe, Acting Deputy Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), noe.song-ae.a@dol.gov (email), or 202-693-9441 (facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

## **I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements for filing petitions for modification.

## **II. Petition for Modification**

Docket Number: M-2021-005-C

Petitioner: Blue Diamond Mining, LLC, 1021 Tori Drive, Hazard, Kentucky, (ZIP 41701)

Mine: Calvary Mine #81, MSHA ID No. 15-12753, located in Leslie County, Kentucky

Regulation Affected: 30 CFR 75.364 (Weekly examination). 30 CFR 75.364(b)(2) requires that at least every 7 days an examination for hazardous conditions shall be made by a certified person designated by the operator in at least one entry of each return air course, in its entirety, so that the entire air course is traveled.

Modification Request: For purposes of weekly examinations, the petitioner requests a modification of the existing standard to permit the establishment of examination points at the upwind and downwind ends of two impassable 30-inch corrugated metal pipes (CMPs), in lieu of through the pipes.

The petitioner states that:

- a) Prior to 2004, two 30-inch diameter CMPs extending approximately 300 feet from the #22 seal set location in Calvary Mine to the return air course were installed and used as ventilation control devices. Air that passed this seal location was directed through these CMPs with the quality and quantity checked during weekly examinations.
- b) The petitioner was recently notified by MSHA that the ventilation pipes were no longer acceptable control devices. Upon the notification, the petitioner stopped up the devices and instead allowed intake air to continue inby toward the working faces.
- c) However, due to overall low mining height, the newly adopted foot travel of 2,700 feet through the affected area is very difficult.
- d) It is also very difficult to construct conventional overcasts due to the immediate roof being large grain sandstone.

The petitioner proposes the following alternative method:

- a) The petitioner shall use the two existing 30-inch CMPs for ventilation controls again to allow air passing from the #22 seal set location to be directed back to the return air course and not to the working faces.
- b) The integrity of the pipe will be examined daily and the integrity of seal set #22 will be examined for hazards twice weekly.
- c) Air measurement stations shall be established at locations that will allow effective evaluation of ventilation in the affected areas. All measurements shall be made by a certified person on a weekly basis. A sign shall be posted designating the location of measuring stations.

- d) All air measurement stations and approaches to such stations shall at all times be maintained in a safe condition. The roof shall be supported by suitable means.
- e) The date, time, and results of these determinations shall be recorded in a book or on a date board that shall be provided at each measuring station. Such results shall also be recorded in a book kept on the surface and made accessible to all interested parties.
- f) Evaluations shall be conducted by a certified person at each of the monitoring stations weekly. The evaluations shall include the quantity and quality of air entering or exiting the monitoring station. These air measurements shall be made using MSHA-approved and calibrated handheld multi-gas detectors to check the methane and oxygen gas concentrations and appropriate, calibrated anemometers to check air flow volume.
- g) The monitoring station locations shall be shown on the mine ventilation map submitted to MSHA annually. The stations shall not be moved to another location without prior approval by the District Manager as a part of the Ventilation Plan for the mine.

The petitioner asserts that the alternate method proposed will reduce injury risks to an examiner and will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

---

Song-ae Aromie Noe,  
Acting Deputy Director,  
Office of Standards, Regulations, and Variances.  
[FR Doc. 2021-06481 Filed: 3/29/2021 8:45 am; Publication Date: 3/30/2021]